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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,724	04/13/2006	Koji Yodate	1163-0551PUS1	1686
2292 7590 06/02/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER ESHETT, ZEALAJEM				
ART UNIT 3748		PAPER NUMBER		
NOTIFICATION DATE 06/02/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

# Office Action Summary

**Application No.**

10/575,724

**Applicant(s)**

YUDATE ET AL.

**Examiner**

Zelalem Eshete

**Art Unit**

3748

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This Office action is in response to the amendment and RCE filed on 5/18/2009.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kinugawa et al. (6,450,138).

Regarding claim 1: Kinugawa discloses a valve timing adjusting device (figure 8) comprising: a first rotor that integrally fixes a housing having the bearing of a camshaft, a case internally having a plurality of shoes projecting therefrom and having hydraulic chambers formed between the shoes, and a cover covering the hydraulic chambers, and that rotates integrally with a crank shaft (16,22); a second rotor that has a plurality of vanes each dividing the hydraulic chamber into an advanced-angle hydraulic chamber and a retarded-angle hydraulic chamber, can rotate through a predetermined angle within the first rotor, and is integrally fixed with an intake or exhaust camshaft (23); energizing means for adjusting the relative position between the first rotor and the second rotor (figure 21; 38,39,40,41); a groove provided on the opposite side of the

shoe on the housing side to accommodate one-end side of the energizing means (figure 21).

Kinugawa fails disclose a hole provided in the vane of the vane of the second rotor to accommodate the other end side of the energizing means.

However, Kinugawa teaches another embodiment that comprises a hole provided in the vane of the second rotor to accommodate the other-end side of the energizing means (figure 19; column 18, 42 to 50).

It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify the system of Kinugawa by using groove for the stator and hole for the vane since either one is an equivalent alternative of the other one for providing a means to accommodate the energizing means as taught by Kinugawa.

Regarding claim 2: Kinugawa as modified above discloses the groove accommodating the energizing means (36,37).

As to the method of molding, a product by process claim is rejected over a prior art product that appears to be identical, although produced by a different process, the burden is upon the applicants to come forward with evidence establishing an unobvious difference between the two. See *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983)

Regarding claim 3: Kinugawa discloses the position at which the energizing means becomes straight is positioned in the vicinity of the position at which the length of the energizing means becomes the maximum (figure 8).

Regarding claim 4: Kinugawa discloses figure 8 that appear to show the necessary relative dimensions of the spring and the groove which when maximally compressed would exceed the groove and thereby clearance is created between the shoe and the vane, absent evidence to the contrary, that the spring in the maximally compressed state is indeed provide the clearance.

Regarding claim 5: Kinugawa discloses a plurality of the energizing means are equally loaded and are disposed at a substantial equiangular space between the shoe and the vane (figure 5).

### ***Response to Arguments***

3. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zelalem Eshete whose telephone number is (571) 272-4860. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Denion can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Zelalem Eshete/

Primary Examiner, Art Unit 3748